BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOHNNIE MCFALL, JR.	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,004,169
UNITED PARCEL SERVICE	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the August 2, 2002 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for an October 10, 2001 accident and the medical complications allegedly resulting from the injuries sustained in that accident. At the preliminary hearing before Judge Barnes, claimant requested, among other things, payment of the medical charges for treating and amputating claimant's right mid-foot, treating and amputating claimant's left lower leg, treating claimant's adult respiratory distress syndrome and treating a pressure sore on claimant's buttocks.

The principal issue presented to Judge Barnes was whether claimant was entitled to receive medical benefits for any conditions other than the right lower extremity crush injury that he sustained in the October 2001 accident. After considering claimant's testimony and considering the medical opinions provided, the Judge concluded respondent and its insurance carrier were responsible for paying all the medical charges in dispute.

Respondent and its insurance carrier challenge Judge Barnes' decision. The only issue on this appeal is whether claimant's left lower extremity complication, respiratory problems and pressure sore are directly related to the October 2001 right foot injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

On October 10, 2001, a bundle of metal rods smashed claimant's right foot while he was working for respondent. The parties do not dispute the accident arose out of and in the course of claimant's employment with respondent.

While receiving treatment for his right foot, claimant developed a staph infection. Claimant was then given an oral antibiotic, which caused vomiting. In one of the vomiting episodes claimant aspirated, which, in turn, caused respiratory distress syndrome and aspiration pneumonia.

On January 11, 2002, claimant was transferred from the intensive care unit of the Hutchinson Hospital to Wesley Medical Center. As there was some concern that the respiratory distress syndrome had caused a subendocardial infarction, a left heart catheterization was performed three days later but it revealed no major changes in claimant's condition from an earlier procedure. The next day, another doctor performed an intra-femoral study on claimant's lower extremities. Following that procedure, claimant's left lower extremity became cold and blue.

The doctors could not save claimant's right foot and on January 25, 2002, amputated the mid-foot. Following surgery, claimant developed a fever and respiratory problems and was placed on a ventilator. During this time, the left foot began to break down. The left lower extremity continued to worsen and on February 14, 2002, claimant's left lower extremity was amputated below the knee. By February 18, 2002, claimant developed a large bedsore.

In July 2002, Dr. Philip Mills evaluated claimant at his attorney's request. The doctor opined that claimant's respiratory, left leg and bedsore complications were directly related to claimant's right foot injury. In his July 15, 2002 letter, Dr. Mills wrote, in part:

> *Diagnosis*:
> 1. Status post right mid-foot amputation secondary to trauma with underlying severe peripheral vascular disease. This clearly was directly related to the injury of 10/10/01.
> 2. Status post left below knee amputation. This appears to be related to the original injury and its subsequent treatment although it is

clear that there were substantial preexisting problems.

3. Adult respiratory distress syndrome. This appears to be related to the treatment for the injury to the right lower extremity.
4. Buttock area pressure sore. This appears to be related to the treatment process.
5. Possible memory loss problems as a result of the treatment.

Causation: Based upon the available information, to a reasonable degree of medical probability, there are substantial preexisting medical problems with peripheral vascular disease and diabetes. These were permanently aggravated or accelerated by the injury which the patient sustained on 10/10/01 as well as subsequent treatment.

The record also contains the opinions of one of claimant's treating physicians, Dr. Terence McDonald. In a February 19, 2002 note, Dr. McDonald related claimant's complications to the right foot injury. The doctor stated, in part:

> The second issue I would like to address is the likelihood that the necrosis and loss of his [claimant's] left leg is related to the original injury of the right foot. While I do not think that the loss of the left leg is a direct result of the injury to his right foot, **I do think that the injury to the right foot and his subsequent problems with wound healing and diabetes control probably precipitated his other medical problems, including cardiovascular problems and pneumonia. As a result of these problems, it was necessary to maintain him on dopamine, and I think that this resulted in the development of gangrene in the left foot.** (Emphasis added.)

Before the October 2001 accident, claimant controlled his diabetes with diet and exercise. Claimant did not require insulin. According to a July 29, 2002 letter from Dr. James L. Casey, who had treated claimant for approximately 15 years, claimant's diabetes was under excellent control before the October 2001 accident.

The greater weight of the medical evidence indicates that claimant's right mid-foot amputation, left lower leg amputation, respiratory complications and bedsore were natural consequences of the October 2001 right foot injury and the treatment provided for that injury. Accordingly, respondent and its insurance carrier are responsible for the related medical charges.

The Board is aware that respondent and its insurance carrier hired Dr. John F. McMaster to provide an opinion in this claim, but at this juncture of the claim the Board

finds his opinions unpersuasive. In his February 10, 2002 report, Dr. McMaster states there is no causal relationship between claimant's need for a left lower leg amputation and his right foot injury. According to Dr. McMaster, the left lower extremity disorder was the direct result of the progression of claimant's peripheral vascular disease, diabetes and atherosclerosis. Based upon the present record, the Board finds the opinions of Dr. Mills and Dr. McDonald more credible.

WHEREFORE, the Board affirms the August 2, 2002 preliminary hearing Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation